

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Danny Stone,

Case No. 16-cv-2721 (WMW/FLN)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION AS MODIFIED**

Scott Benoit, et al.,

Defendants.

This matter is before the Court on the May 3, 2017 Report and Recommendation (R&R) of United States Magistrate Judge Franklin L. Noel. (Dkt. 23.) The R&R recommends granting the motion to dismiss filed by Defendants Scott Benoit, Mandy Torgerson, and Ann Linkert, (Dkt. 10), and dismissing with prejudice Plaintiff Danny Stone's complaint, (Dkt. 1), for lack of subject-matter jurisdiction because Stone's claims are barred by the statute of limitations. No objections to the R&R were filed in the time period permitted.¹ In the absence of timely objections, this Court reviews an R&R for clear error. *See* Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Having reviewed the R&R, the

¹ Stone filed objections to the R&R after the deadline to do so expired. Although the Court need not consider Stone's untimely submission, the Court nonetheless has reviewed Stone's objections. The allegations in Stone's complaint pertain to conduct that occurred in February 2010, and Stone has not alleged facts to permit a plausible inference that his claims were subject to equitable tolling. Consequently, Stone's objections do not alter the Court's conclusion.

Court concludes that Stone's claims should be dismissed for failure to state a claim on which relief can be granted under Fed. R. Civ. P. 12(b)(6) rather than for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1). *See Johnson v. Mott*, 376 F. App'x 641, 641-42 (8th Cir. 2010) (affirming dismissal with prejudice for failure to state a claim on which relief can be granted when limitations period had run).

ORDER

Based on the R&R and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The May 3, 2017 R&R, (Dkt. 23), is **ADOPTED AS MODIFIED**; and
2. The motion to dismiss of Defendants Scott Benoit, Mandy Torgerson, and Ann Linkert, (Dkt. 10), is **GRANTED**;
3. Plaintiff Danny Stone's complaint, (Dkt. 1), is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 25, 2017

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge